

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

ROBERT M. HERRIN

Serial No. 10/721,962

Filing Date: 11/25/2003

For: **TRAY FORMING APPARATUS**

Examiner:

Christopher R. Harmon

Group Art Unit: 3721

Attorney Docket No. 7703.26

Asst. Commissioner for Patents
Alexandria, VA 22313-1450

Sir:

DECLARATION OF JIM LIEFERT

UNDER 37 CFR § 1.132

I, Jim Liefert, do hereby declare and say as follows:

1. I have 25 years experience in maintenance and management of packing facilities. I am currently employed as General Manager at IMG Citrus located at 45th Street, Vero Beach, FL. Included in my duties at IMG is the purchase of capital equipment.

2. IMG Citrus purchased two different style stray formers from R&L Manufacturing, Inc. The first was a machine to form a Euro style tray. The second was a machine to form a tray having a double glued corner structure.

3. The first machine is the apparatus described in U.S. Patent No. 5,971,906 to Tharpe et al. When we changed style trays an attempt was made to modify this machine to form the double glued corner style tray. This required a total redesign of the forming elements. We were unsuccessful in attempts to modify the apparatus described in the Tharpe '906 patent to provide the structure described in the above

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referenced Herrin application. Attempts to modify the Tharpe '906 apparatus did not result in a feasible apparatus useful in forming the desired tray.

4. Based on our failed attempts to modify the Tharpe '906 apparatus, we then purchased a second machine to form the desired double glued corner style tray. The second machine is the apparatus described and claimed in the above referenced Herrin application. It is very clear that the combination of elements used in the Herrin apparatus are significantly different than those described in the Tharpe '906 apparatus.

5. I have read the Examiner's opinion and interpretation of the Tharpe '906 patent with regard to claims pending in the above-referenced U.S. utility patent application. It would seem the Examiner has taken features described in the Tharpe '906 patent for one tray forming apparatus and determined that the Tharpe '906 patent would allow one of skill in the art to make the Herrin apparatus based on features including a platen, forming rails, a first folding arm, a compression platen with a fixed platen that forms a passage between the comprising platen and the fixed platen, and a second folding arm for biasing against a portion of the formed tray through the passage.

6. It would appear that the Examiner further interprets the first folding arm being positioned proximate the distal portion of the forming rail and down stream the proximal portion, to be the folding arm elements described in the Tharpe '906 patent to support his opinion that it would simply be a matter of engineering design choice and obvious to one of ordinary skill in the art to make the first arm movable in the apparatus described in the Tharpe '906 patent as taught by the second folding arm in the Tharpe '906 patent.

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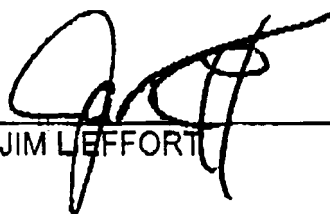
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7. In reviewing the pending office action in the above referenced patent application, it appears that the Examiner considers the disclosure in the Tharpe '906 patent to be so revealing that it suggests the Herrin invention to one having skill in the art, where that skilled person would only need to use engineering design choices to arrive at the Herrin invention. My experience with the Herrin apparatus and the Tharpe 906 apparatus would show otherwise. Changes to the apparatus disclosed in Tharpe 906 were made in an attempt to construct the Herrin apparatus. The changes could not provide the structure of the Herring apparatus, and could not be used to form the desired tray structure that the Herrin apparatus could form.

8. I must conclude that the teachings of the Tharpe '906 patent do not provide sufficient guidance to one skilled in the art to make modifications that result in the apparatus of Herrin, as appear to be suggested by the Examiner.

9. I hereby declare that all statements made herein of my own accord are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that any such willful false statements may jeopardize the validity of the application or any patent issued thereon.

8/25/06
Date


JIM LEFFORT